

About House Bill 1 (HB1): Labor and Employment—Maryland Healthy Working Families Act, is legislation that MHLA opposed during the 2017 Legislative Session but passed and was vetoed by Governor Larry Hogan. Governor Hogan’s veto was overridden by the House of Delegates on January 11th and the Maryland Senate on January 12th, and will go into effect on February 11, 2018.

MTC recommends that you familiarize yourself, your HR and payroll departments regarding the tenets of this legislation, as it requires specific record keeping. Please feel free to contact us if you have any questions.

What the Bill does:

HB 1 (2017 Session) Delegates [Clippinger](#) and [Davis](#), LABOR AND EMPLOYMENT – MARYLAND HEALTHY WORKING FAMILIES ACT

Requiring employers with 15 or more employees to provide employees with “earned sick and safe leave” (“SSL”) that is paid at the same rate as the employee normally earns; requiring employers with 14 or fewer employees to provide an employee with unpaid SSL:

- Employees may earn up to 40 hours/year of SSL, may use up to 64 hours/year of SSL, accrue up to 64 hours/year of SSL, and carry over up to 40 hours/year of SSL; provided, however, that if the employer awards the employee a full 40 hours of SSL at the beginning of the year, no carryover is required;
- An employee does not accrue SSL if the employee:

- » regularly works less than 12 hours/week;
- » in a two-week pay period, works fewer than 24 hours;
- » in a one-week pay period, works fewer than a combined total of 24 hours in the current and the immediately preceding pay period; or
- » in a semi-monthly pay period (paid twice a month regardless of the number of weeks in a pay period), works fewer than 26 hours;

- Employers may prohibit use of SSL during the first 106 days of employment;
- Employers are not required to pay employees for accrued SSL on termination;
- Employers may require employees to take SSL in increments of not greater than four (4) hours;
- Employees rehired within 37 weeks of termination are entitled to whatever SSL they had accrued prior to termination;
- Employers are not required to modify existing paid leave policies, including (1) vacation days; (2) sick days; (3) short-term disability benefits; (4) floating holidays; (5) parental leave; and (6) other paid time off if such leave accrues at the same rate and may be used for the same purposes as SSL, or if the use of such paid leave does not reduce employee compensation for an absence due to SSL;

Employees may use SSL as follows:

- » for paternity or maternity leave;
- » to care for or treat the employee’s mental or physical illness, injury, or condition;
- » to obtain preventive medical care for the employee or employee’s “family member”;
- » to care for a “family member” with a mental or physical illness, injury, or condition; or
- » in the case of domestic violence, sexual assault, or stalking committed against the employee or the employee’s “family member”, to obtain for the employee or the employee’s “family member”:

- medical or mental health attention that is needed to recover from physical or psychological injury or disability;
- services from a victim services organization;
- legal services; or
- the employee’s temporarily relocation due to the domestic violence, sexual assault, or stalking

» “family member” is defined to include: a biological child, an adopted child, a foster child, or a stepchild of the

employee; (2) a child for whom the employee has legal or physical custody or guardianship; (3) a child for whom the employee stands in loco parentis, regardless of the child's age; (4) a biological parent, an adoptive parent, a foster parent, or a stepparent of the employee or of the employee's spouse; (5) the legal guardian of the employee; (6) an individual who acted as a parent or stood in loco parentis to the employee or the employee's spouse when the employee or the employee's spouse was a minor; (7) the spouse of the employee; (8) a biological grandparent, an adopted grandparent, a foster grandparent, or a step grandparent of the employee; (9) a biological grandchild, an adopted grandchild, a foster grandchild, or a step grandchild of the employee; or (10) a biological sibling, an adopted sibling, a foster sibling or a stepsibling of the employee.

- Employers' sick leave policies must provide at least the exact same accrual and permissible reasons for taking leave as outlined above, but may be more generous;
- If the reason to take SSL is foreseeable, employers may require up to 7 days' advance notice; if the reason is not foreseeable, the employee must provide notice as soon as practicable. Employers may refuse SSL if an employee does not provide notice and the employee's absence would be disruptive to the employer;
- An employer may require an employee who uses SSL for more than two consecutive scheduled shifts to provide verification that the leave was used appropriately; if the employee fails to do so, an employer may deny a subsequent request to take SSL for the same reason;
- An employer may adopt and enforce a policy that limits an employee to using earned sick and safe leave only for the reasons listed above, and prohibits the improper use of earned sick and safe leave, including prohibiting a pattern of abuse of earned sick and safe leave.
- When wages are paid to an employee, the employer shall provide in writing or on line by any reasonable method a statement regarding the amount of SSL that is available for use by the employee;
- There are special provisions for "restaurants", defined as an establishment that (1) accommodates the public; (2) is equipped with a dining room with facilities for preparing and serving regular meals; and (3) has average daily receipts from the sale of food that exceed the average daily receipts from the sale of alcoholic beverages;

» an employer may not be required to pay a tipped employee more than the applicable minimum wage for SSL;
» if an employee employed in the restaurant industry, who is compensated as a tipped employee and who would be entitled to SSL, (1) needs to take SSL, (2) prefers and is able to work additional hours or trade shifts with another employee in the same pay period or the following pay period; (3) requires the employer to arrange coverage of the shift, and (4) contacts the employer to arrange coverage of a shift, then the employer may offer the employee a choice of:

- Being paid the minimum wage required under §3-413 (Payment of Minimum Wage Required) of the Labor and Employment Article for the employee's absence; or
 - Working an equivalent shift of the same number of hours in the same pay period or the following pay period.
 - An employer is not required to consent to an employee's request to work additional hours or trade shifts if the additional hours or trade in shifts would result in the employer being required to pay overtime to the employee.
 - If the employer does not offer the employee the choice set out above, then the employer must pay the employee the required minimum wage for the employee's use of SSL.
 - An employer may deduct an absence taken under these provisions from the employee's accrued SSL.
- The Commissioner of Labor and Industry can inspect records and conduct hearings on complaints of violations; if the employer is guilty, the Commissioner can order restitution, up to treble damages, and \$1,000 fine; if an employer refuses to pay the assessed fine, etc.,

» an employer may not be assessed a civil penalty by the Commissioner under this subtitle due to an unintentional payroll error or written notice error caused by a third-party payroll service provider with whom the employer contracted for services;

» the Commissioner may request the Attorney General to sue on the employee's behalf; or

» an employee may bring an action within 3 years and, in the discretion of the court, recover up to treble actual damages, plus punitive damages, plus attorneys' fees and costs, plus injunctive relief;

- After January 1, 2017, a local jurisdiction may not enact a law that regulates sick and safe leave provided by an employer other than the local jurisdiction, except Montgomery County may amend its SSL law;
- The bill does not apply to union employees in the construction industry IF covered by a bona fide collective bargaining agreement in which the requirements of this subtitle are expressly waived in clear and unambiguous terms;
- The bill does not apply to collective bargaining agreements entered into prior to 06-01-2017 for the duration of the contract term.

EFFECTIVE ~~JANUARY 1, 2018~~ FEBRUARY 11, 2018 [Maryland Constitution, Art. II, §17(d)]